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August 8, 1994

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**VIA HAND DELIVERY**

**EX PARTE NOTICE**

William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: MM Docket No. 92-265  
Program Access Proceeding

CS Docket No. 94-48 ✓  
Cable Competition Report

Dear Mr. Caton:

In accordance with Section 1.1206 of the Commission's rules, the purpose of this letter is to provide notification that on this date the undersigned, on behalf of our client, the National Rural Telecommunications Cooperative ("NRTC"), and Rich LaRochelle, Senior Legislative Representative, National Rural Electric Cooperative Association ("NRECA") met with Mary P. McManus, Legal Advisor, to the Honorable Susan Ness, Commissioner, to discuss NRTC's pending Petition for Reconsideration in MM Docket No. 92-265 (Program Access proceeding) and NRTC's Comments in CS Docket No. 94-48 (Cable Competition Report).

During our meeting, we discussed the fact that as a DBS distributor NRTC has no access to any of the popular programming of two of the largest, most vertically-integrated cable programmers: Time Warner and Viacom. Time Warner and Viacom have entered into exclusive, anti-competitive DBS program distribution arrangements with United States Satellite Broadcasting Company, Inc. ("USSB") for the specific purpose of blocking access by NRTC and DirectTV to Time Warner's and Viacom's programming (i.e., Cinemax, Flix, HBO, The Movie Channel, Showtime, Comedy Central, MTV, VH-1, and Nickelodeon). This type of exclusivity arrangement allows the vertically-integrated cable industry to control DBS as a competitive technology. It is contrary to the letter and spirit of the Program Access provisions of the Cable Act (47 U.S.C. 548(c)(2)(C)) and should be specifically prohibited by the Commission's rules (47 C.F.R. 76.1002(c)(1)).

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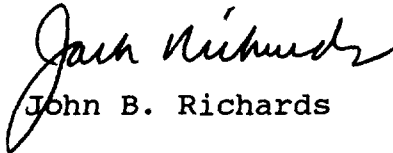
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We provided a copy of the attached Chart entitled "Program Access" to Ms. McManus during the course of our meeting. This Chart depicts the Program Access limitations imposed on NRTC as a result of the USSB/Time Warner/Viacom exclusivity arrangement. NRTC is unable to select from a full, competitive menu of programming for distribution over DBS to persons in areas unserved by cable. Meanwhile, the cable industry has complete access to this programming for distribution via cable, HSD, medium power and high power DBS. As a result, consumer choice is artificially restricted. Competition from DBS to cable is reduced, and DBS retail prices are unnecessarily inflated.

Four copies of these materials are enclosed herewith so that two copies may be included in the public record of each of these proceedings.

Your attention to this matter is appreciated. Should you require any additional information, please feel free to contact the undersigned.

Sincerely,

  
John B. Richards

cc: Mary P. McManus

# PROGRAMMING ACCESS

Access to Programming Controlled by Vertically Integrated Cable Companies

PROGRAMMER	DIRECTV™	USSB *	PrimeStar *	3 LARGEST * C-BAND DISTRIBUTORS (HBO, Showtime, Netlink [TCI])	Cable MSOs (ATC/Viacom) *
<b>Cinemax</b>		X	X	X	X
<b>Flix</b>		X	X	X	X
<b>HBO</b>		X	X	X	X
<b>The Movie Channel</b>		X	X	X	X
<b>Showtime</b>		X	X	X	X
<b>Comedy Central</b>		X	X	X	X
<b>MTV</b>		X	X	X	X
<b>VH1</b>		X	X	X	X
<b>Nickelodeon</b>		X	X	X	X
<b>Lifetime</b>	X	X	X	X	X
<b>American Movie Classics</b>	X	X	X	X	X
<b>BET</b>	X	X	X	X	X
<b>Bravo</b>	X	X	X	X	X
<b>Cartoon Network</b>	X	X	X	X	X
<b>Country Music TV</b>	X	X	X	X	X
<b>CNN/Headline News</b>	X	X	X	X	X
<b>Court TV</b>	X	X	X	X	X
<b>Discovery Channel</b>	X	X	X	X	X
<b>E! Entertainment TV</b>	X	X	X	X	X
<b>Encore</b>	X	X	X	X	X
<b>Family Channel</b>	X	X	X	X	X
<b>Fox Network</b>	X	X	X	X	X
<b>Home Shopping Network</b>	X	X	X	X	X
<b>The Learning Channel</b>	X	X	X	X	X
<b>QVC</b>	X	X	X	X	X
<b>Q2</b>	X	X	X	X	X
<b>The Nashville Network</b>	X	X	X	X	X
<b>Sci-Fi Channel</b>	X	X	X	X	X
<b>TNT</b>	X	X	X	X	X
<b>Travel Channel</b>	X	X	X	X	X
<b>Turner Classic Movies</b>	X	X	X	X	X
<b>USA Network</b>	X	X	X	X	X
<b>The Weather Channel</b>	X	X	X	X	X

★ CROSS OWNERSHIP INTERESTS WITH  
USSB/TIME WARNER/VIACOM